IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.1038 OF 1999
IN
SUMMARY SUIT NO.102 OF 1999

Rajdhani Printers Ltd. ..Plaintiffs

Vs.

M/s.Film & Video Associates ..Defendants

Ms.Alpana Ghone i/b Kanga and Co. for the plaintiffs

CORAM : S.U.KAMDAR, J
DATED : 12TH SEPTEMBER, 2005

P.C.:

1. The present suit is filed for refund of sum of Rs.5.0 lacs paid towards advance under agreement dt.3.8.95 for the purpose of assignment of film distribution rights. Clause 14 and 15 of the said agreement reads as under:

> "14. In the event the Assignors for whatever reasons fails to give delivery of the said film(s)/programme of the requisite quality within the stimulated period, the Assignees shall have the rights to claim refund of the sums paid as advance plus liquidated damages of the equivalent amount which shall become payable immediately upon the failure on the part of the

assignors.

15. In the event the Assignors fails to refund the sum paid to them by Assignees as advance payment, the Assignees shall be entitled to claim liquidated damages at the rate of 21% interest on outstanding dues from the Assignors. This is without prejudice to the right of the Assignees to enforce specific performance of the terms of the contract/agreement made by the Assignors.

2. Under the terms and conditions of the said agreement, in an event if the films are not delivered plaintiffs is entitled to refund of said amount. The learned counsel for the plaintiff states that films are not delivered and accordingly suit is filed for recovery of amount which is paid under the said agreement. Defendants were served with the Summons for Judgment. However, none appeared for the defendants. By my orders dt.30.8.05 and 5.9.05 I directed the defendants to serve notice to the defendants advocate as well as defendants. Two affidavit of service has been filed on 5.9.05 and 12.9.05 indicating the service of the said Summons for Judgment and the notice. However, it has been found that none is found in the said address given int he present proceeding.

There is no reply to the Summons for Judgment. In view thereof, the present Summons for Judgment is required to be made absolute. In the aforesaid circumstances, suit is decreed as prayed. Suit is disposed of accordingly. In view of the aforesaid Summons for Judgment also does not survive. The same is disposed of as infructuous. Refund of court fee as per rules.